

## ★CHAPTER 14★

**SALE OF SAMPLES, DRAWINGS, INFORMATION, EQUIPMENT,  
AND CERTAIN SERVICES BY A GOVERNMENT LABORATORY,  
CENTER, RANGE, OR TESTING FACILITY**

1401 OVERVIEW140101. Purpose.

This chapter provides the reimbursable policy for sales of samples, drawings, information, equipment, and certain services to non-DoD persons or entities, as authorized by 10 U.S.C. 2539b. This chapter does not apply to facilities and ranges of the Major Range and Test Facility Base (MRTFB). Guidance pertaining to the use of the MRTFB is contained in chapter 12 of this Volume. This chapter also does not apply to any DoD Working Capital Fund activities. Guidance pertaining to DoD Working Capital Fund activities is contained in Volume 11B of this Regulation.

140102. General.

It is the policy of the Department of Defense to promote research and development within the commercial sector of the U.S. economy, and the transfer of technology from the military to the commercial sector. These policies strengthen national security by promoting the development of a national industrial and technological base from which to sustain military technological superiority, while enhancing production capabilities for the nation overall. Furthermore, these policies provide the guidance for the commercial use of defense laboratories and test facilities, equipment, materials, drawings, and manufacturing or other information.

1402 POLICY AND PROCEDURES140201. General.

A. Under section 2539b of Title 10, United States Code, the Secretary of Defense, the Secretaries of the Military Departments, Directors of Defense Agencies, or their designees, when determined by appropriate authority to be in the interest of national defense, are authorized to:

1. Sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to rights of third parties) to any person or entity;

2. Sell, rent or lend government equipment or material to any person or entity for use in independent research and development programs, subject to the condition that such equipment or material be used exclusively for such research and development, or for use in demonstrations to a friendly foreign government; and

3. Make available to any person or entity, at a prescribed fee, the services of any Department laboratory, center or other testing facility for the testing of materials, equipment, models, computer software, and other items.

B. Classified information shall not be sold, loaned or given pursuant to this authority unless such a release of information is in accordance with DoD 5200.1-R. Unclassified, but Sensitive, material shall be handled in accordance with DoD Directive 5230.25.

140202. Government Equipment or Materials.

A. In determining whether to sell, rent or loan government equipment or materials, consideration shall include, but not be limited to:

1. The current or probable future need of the government item;
2. The residual value of the item;
3. Expense incident to handling and storage of the item;
4. The probable cost of reproduction of the item in the event of future procurement; and
5. Whether the sale, rent or loan furthers the transfer of technology to the commercial sector.

140203. Government Facility Resources.

A. Ordinarily, the testing of materiel and other items not owned by the government shall not cause government personnel or other government resources to be diverted from scheduled tests of government materiel or otherwise interfere with government mission requirements.

B. The laboratory director or activity commander with immediate authority over the government testing facility shall determine the priority of use of such facility for testing of materiel and other items not owned by the government. In so determining, the director or commander shall consider the degree to which the proposed test furthers the policies set forth in subparagraph 140201.A., above. The director or commander may revise established test

schedules in order to accommodate tests of materiel and other items not owned by the government.

C. The results of tests performed in government test facilities under subparagraph 140201.A.3. may contain proprietary or other confidential information that may be exempt from mandatory disclosure under the Freedom of Information Act. In such cases, the government may not otherwise disclose such information without the consent of the persons for whom the tests are performed.

### **1403 FEES AND CHARGES**

#### **140301. General.**

A. Fees and charges for sales, rents or loans authorized by subparagraphs 140201.A.1. and A.2. shall include all direct and indirect costs to recover the total cost to the government.

B. Internal management controls (see DoD Directive 5010.38) must be established to ensure that charges and fees are developed and adjusted, using current, accurate, and complete data, to provide reimbursement conforming to these requirements. Such controls also must ensure compliance with cash management and debt collection policies (see DoD Directive 7045.13).

C. Payment for items and fees incident to a sale, rent or loan under subparagraphs 140201.A.1. and A.2. or for a service provided under 140201.A.3. shall be made only by cashier's check, certified check, bank money order, or postal money order payable to the U.S. Treasury.

#### **140302. Services of Government Facilities.**

A. When government services are made available under subparagraph 140201.A.3., a fee or charge generally shall be imposed to recoup the total cost incurred by the government in providing the service. When approved by the laboratory/facility director/commander, prior to providing the service, all or a portion of the indirect costs may be eliminated from the fees or charges. Direct costs, at a minimum, must be charged. Sales of services at less than the total cost are permitted only when:

1. There is a compelling reason to provide the service at less than the total cost;
2. The service is in the interest of the national defense;

3. There will be no competition with the private sector; and

4. The service does not involve expansion of the capabilities and capacities of the laboratory/facility providing the service, even if the customer agrees to finance the expansion.

B. Special consideration as to recovery of less than full cost may be given when:

1. The recipient of the benefit is engaged in a nonprofit activity designed for public safety, health or welfare;

2. Payment of the full fee or charge by a state, local government or nonprofit activity would not be in the government's best interest; or

3. Laboratory/facility directors/commanders have determined that the incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

C. When less than full cost is charged, laboratory/facility directors/commanders shall maintain adequate documentation that justifies and supports each decision. Such documentation should address the above criteria and be available for review by higher authorities or any audits or inspections.

D. Under no circumstances may fees exceed the amount necessary to recoup the total costs incurred.

E. Specific guidance pertaining to the calculation of charges and fees is provided in Chapter 4 of this volume, "User Charges."

140303. Collection of Fees or Charges.

A. All fees or charges from private parties or agencies outside the U.S. Government must be collected in advance of the service being provided.

B. Specific guidance pertaining to the collection of fees is provided in Chapter 4 of this volume, "User Charges."

140304. Disposition of Fees or Charges Received.

A. Fees or charges received from sales or loans under subparagraph 140201.A.1. and A.2. shall be deposited into the miscellaneous receipts account of the U.S. Treasury.

B. Fees or charges received for services performed under subparagraph 140201.A.3. shall be credited to the appropriation, fund or account that finances the activity making such services available.

140305. Warranties and Liability.

All transfers of goods or services of whatever nature made pursuant to this Regulation shall be without any express or implied warranty. The government shall accept no liability for any damages whether direct or consequential. Furthermore, the recipient of the goods or services shall agree to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind arising out of or in connection with goods or services so provided.

140306. Liability for Loss and Damage of U.S. Government Property on Loan to a Private Party.

The agreement with the individual, company, corporation, organization, etc., shall include a clause stating that the U.S. Government will be reimbursed for any losses or damages arising out of or in conjunction with the use of government property.

1404 DEFINITIONS

1. Drawing. A diagram, plan or list that shows in detail the fabrication or assembly of structural elements, or the installation of materials and equipment. A drawing details the characteristics, or outlines the parts or operation of a product or item.

2. Equipment or Materials. Property, including machinery, devices, apparatus, and components of such items.

3. Friendly Foreign Government. Those countries for which a Presidential Determination has been provided under Section 3(a)(1) of the Arms Export Control Act, and to which transfer has not been prohibited by the Department of State under the International Traffic in Arms Regulations (22 CFR 120).

4. Independent Research and Development (IR&D) Programs. A research and development effort that is not sponsored by, or required in performance of a government contract, or grant for: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. IR&D programs do not include technical efforts expended in developing and preparing technical data specifically to support submitting a bid or proposal.

5. Manufacturing or Other Information. Any blueprints, drawings, plans, instructions, documentation, or other technical information that can be used or adopted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any equipment or material.

6. Person or Entity. An individual or firm, labor organization, partnership, association, corporation, a university or not-for-profit center, or a governmental unit of the United States or its territories.

7. Sample. A unit or units of a product drawn from a lot or batch that is representative of the product and is constructed in conformance with the requirements and complies with specifications of the product.

8. Laboratory. A facility or group of facilities owned, leased or otherwise used by a Federal Agency, a substantial purpose of which is the performance of research, development, engineering, test, and evaluation, or otherwise developing or maintaining technology.